LE COPY

Office-Supreme Court, U.S.
FILED
JAN 21 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

No. 610

ALBERT J. McDONALD,
Petitioner and Appellant Below,

vs.

ROBERT W. O'MEARA, FIRST CITY NATIONAL BANK OF HOUSTON, TEXAS, F. W. ARCHER, and THE LOUISIANA LAND AND EXPLORATION COMPANY,
Respondents and Appellees Below.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR RESPONDENT, THE LOUISIANA LAND AND EXPLORATION COMPANY, IN OPPOSITION.

M. TRUMAN WOODWARD, JR.,
G. HENRY PIERSON, JR.,
H. H. HILLYER, JR.,
1122 Whitney Building,
New Orleans, La.,
Attorneys for the Louisiana Land and Exploration Company.

HAUSER PRINTING CO., INC., NEW ORLEANS

IN THE

Supreme Court of the United States

No. 610

ALBERT J. McDONALD,
Petitioner and Appellant Below,

versus

ROBERT W. O'MEARA, FIRST CITY NATIONAL BANK OF HOUSTON, TEXAS, F. W. ARCHER, and THE LOUISIANA LAND AND EXPLORATION COMPANY,
Respondents and Appellees Below.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR RESPONDENT, THE LOUISIANA LAND AND EXPLORATION COMPANY, IN OPPOSITION.

STATUTES AND REGULATIONS INVOLVED

The statutes, and other regulations involved are Louisiana Revised Statutes of 1950, Title 9, Section 4105 and Louisiana Civil Code Article 2266. They are printed in Appendix A, *infra*, p. 7.

STATEMENT

The Louisiana Land and Exploration Company ("Land Company"), for purposes of this Opposition deems a statement of fact unnecessary.

ARGUMENT

I.

Petitioner Does Not Challenge The Merit Of Land Company's Motion To Dismiss

Petitioner's application for a writ of certiorari must be denied as to Land Company for it does not request a review of Land Company's motion to dismiss.[1] Admittedly, petitioner requests a review of the judgment of the Court of Appeals,[2] but an examination of the petition reveals petitioner to be concerned solely with obtaining a review of the summary judgment[3] which was granted all respondents, except Land Company.[4] The merit of Land Company's motion to dismiss is neither challenged nor raised by petitioner; in fact, petitioner never referred to Land Company. In setting forth the statutes involved in this case,[5] as required under Rule 40-1-(c),[6] the petitioner sets out the Federal Rule of Civil Procedure under which the summary judgment was granted; he did not set out the Federal Rule of Civil Procedure under which Land Company's motion to dismiss was granted. Again, in concluding his argument,

---

[1] See Supreme Court Rule 23-1(c), 28 U.S.C.; *Irvine v. State of California*, 347 U.S. 128, 129, 98 L. Ed. 561, 567, 74 S. Ct. 381 (1958); *Rorick v. Devon Syndicate*, 307 U.S. 299, 302, 83 L. Ed. 1303, 1306; 59 S. Ct. 877 (1939); *General Talking Pictures Corp. v. Western Electric Company*, 304 U.S. 175, 179, 82 L. Ed. 1273, 1275, 58 S. Ct. 849 (1938).

[2] Petition p. 1

[3] Petition, p. 2, 6, 12, 15, 24, 38

[4] See *Connecticut Railway & Light Company v. Palmer*, 305 U.S. 493, 496, 83 L. Ed. 309, 59 S. Ct. 316 (1939)

[5] Petition p. 4

[6] Supreme Court Rule 40-1-(c), 28 U.S.C.

petitioner refers only to the summary judgment and reasons for reviewing its granting.[7] Since only questions raised in the petition for certiorari will be considered by the Court,[8] the petition should be dismissed as to Land Company.

II.

Certiorari Is Not Applicable

Alternatively, the present case concerns a narrow question unlikely to reoccur governed by state law, which turns solely upon the construction of particular instruments (which themselves are the sole law between the parties[9]); it thereby fails to fall within the spirit of Rule 19[10] and certiorari must be denied.[11] The questions presented by petitioner do not concern conflicting decisions,[12] principles of rational importance,[13] or a federal question,[14] and only the actual litigants will be affected by the questions presented.[15] Furthermore, the issues involved have been correctly passed on by two courts well versed in the law of Louisiana and should not be passed on again.[16] Petitioner is one of the great mass of applicants for a writ of certiorari, who merely seek one last

---

[7] Petition p. 38, 39

[8] See note 1 *supra.*

[9] *Mallett v. Union Oil and Gas Corporation*, 232 La. 157, 94 So. (2d) 16 (1957)

[10] Supreme Court Rule 19, 28 U.S.C.

[11] *Cf. Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74-75, 99 L. Ed. 897, 901, 75 S. Ct. 614 (1955)

[12] As in *Affront v. United States*, 350 U.S. 79, 100 L. Ed. 762, 76 S. Ct. 171 (1955)

[13] As in *Panama Canal Company v. Grace Line*, 356 U.S. 309, 2 L. Ed. (2d) 788, 78 S. Ct. 752 (1958)

[14] As in *Watkins v. United States*, 354 U.S. 178, 1 L. Ed. (2d) 1273, 77 S. Ct. 1173 (1957)

[15] *Cf. Southern Power Company v. North Carolina Public Service Company*, 263 U.S. 508, 68 L. Ed. 413, 44 S. Ct. 164 (1924); *United States v. Rimer*, 220 U.S. 547, 55 L. Ed. 578, 31 S. Ct. 596 (1911)

[16] *Cf. Estate of Spiegel v. Commissioner of Internal Revenue*, 335 U.S. 701, 707, 708, 93 L. Ed. 330, 338, 69 S. Ct. 301 (1949); *Helvering v. Stuart*, 317 U.S. 154, 163, 87 L. Ed. 154, 160, 63 S. Ct. 140 (1942)

review of an adverse decision, and whose application must be denied if the Court is to remain effective.[17]

III.

The Decision Below Was Correct

The original complaint[18] set forth as grounds for cancellation of a mineral lease alleged violations of obligations undertaken by O'Meara in the "Escrow Agreement",[19] which obligations were not attached to the lease[20] when Land Company acquired its interest. The motion to dismiss was levelled, in part, at the theory of the complaint that violation of the "Escrow Agreement" entitled plaintiff to cancellation as to Land Company. The law of Louisiana, which admittedly applies, is clear.

> "Neither party to a contract has any power to change his obligations to a third party, growing out of said contract, by subsequently altering or prolonging its execution as between themselves."[21]

Here, Land Company was not a party to the Escrow Agreement and such agreement can not be used against it.

An overriding royalty interest is a "real right and incorporeal immovable property".[22] The recordation of the instrument evidencing such interest is notice to the world,[23] including the lessee and his predecessors in title to

---

[17] Address of Chief Justice Vinson before American Bar Association, Sept. 7, 1949, St. Louis. Daily Record (Sept. 8, 1949, p. 1); *Magnum Import Co. v. DeSportsvino Coty*, 262 U.S. 159, 163; 67 L. Ed. 922, 924 (1923)

[18] Tr. p. 22

[19] Tr. p. 54-61.

[20] Tr. p. 34-51.

[21] *Sargeant v. Downey*, 14 La. 43 (Syllabus); see also *Keystone v. Lambreaux*, 6 La. Ann. 26; *Parker v. Webb*, 205 La. 799, 18 So. (2d) 198.

[22] R.S. 9:1105, (La.)

[23] *Cf. Logan v. Union Sulphur Co.*, 29 F. Supp. 33 (D.C. La.); *Alexandria Production Credit Ass'n v. Horn*, 199 So. 430 (La. App.)

the lease, that the lessee may not amend said lease to the prejudice of said overriding royalty interest.[24] The Complaint contends that the unrecorded Escrow Agreement sought to do just that. If it did, it is null[25] as to Land Company and no violation of its terms can affect Land Company's rights.

The lease entered into between O'Meara and McDonald provides that the lessee may "purchase a lease from others to protect its leasehold rights"[26] without disputing the lessor's title; it further provides that if the "Lessor's title or an interest therein is claimed by others",[27] the lessee may withhold payment of royalties until the final determination of lessor's rights.

Petitioner's "title or an interest therein" was claimed by others and litigated in *Daspit, et al. v. Broussard, et al.*[28] O'Meara withheld royalties during the conflict of interest as permitted under the terms of his lease. This clearly did not constitute a violation of the lease obligations enabling petitioner to seek cancellation of the lease; as such, a writ of certiorari should be refused petitioner.

CONCLUSION

For the foregoing reasons it is respectfully sub-

---

[24] *Cf. George v. Manhattan Land & Fruit Co.*, 51 F. (2d) 28 (C.C.A. 5th); *McGee v. Louisaina Lumber Co.*, 124 La. 696; 49 So. 475.

[25] *Cf.* Art. 2266, La. Civil Code. See also: *Kaufman v. Arkansas Fuel Oil Co.*, 133 F. (2d) 787 (C.C.A. 5th); *Braswell v. Columbia County Development*, 153 La. 691, 96 So. 534. *Cf.* cases cited above, note 21.

[26] Tr. p. 48

[27] Tr. p. 48

[28] Tr. p. 333 *Daspit, et al. v. Broussard, et al.*, No. 17,504, 17th Judicial District Court, Parish of Terrebonne, Louisiana.

mitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

M. TRUMAN WOODWARD, JR.,
G. HENRY PIERSON, JR.,
H. H. HILLYER, JR.,
1122 Whitney Building,
New Orleans, La.,
Attorneys for the Louisiana Land and Exploration Company.

APPENDIX A

La. R.S. 9:1105.

Oil, gas and other mineral leases, and contract applying to and affecting these leases or the right to reduce oil, gas, or other minerals to possession, together with the rights, privileges, and obligations resulting therefrom, are classified as real rights and incorporeal immovable property. They may be asserted, protected and defended in the same manner as may be the ownership or possession of other immovable property by the holder of these rights, without the concurrence, joinder, or consent of the landowner, and without impairment of rights of warranty, in any action or by any procedure available to the owner of immovable property or land. This Section shall be considered as substantive as well as procedural so that the owners of oil, gas and other mineral leases and contracts within the purpose of this Section shall have the benefit of all laws relating to the owners of real rights in immovable property or real estate. As amended Acts 1956, 2nd Ex. Sess., No. 6, § 1.

Louisiana Civil Code, Art. 2266.

All sales, contracts and judgments affecting immovable property, which shall not be so recorded, shall be utterly null and void, except between the parties thereto. The recording may be made at any time, but shall only affect third persons from the time of the recording.

The recording shall have effect from the time when the act is deposited in the proper office, and indorsed by the proper officer.